

**Response Under 37 C.F.R. 1.116**

Applicant: William J. Bertrand et al.

Serial No.: 10/698,117

Filed: October 31, 2003

Docket No.: M190.247.101 / P0011522.00

Title: INDICATOR TOOL FOR USE WITH AN IMPLANTABLE MEDICAL DEVICE

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**REMARKS**

The following remarks are made in response to the Final Office Action mailed June 22, 2010. In that Office Action, claims 8, 10-13, and 15-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bertrand et al., U.S. Publication No. 2002/0022793 (“Bertrand”) in view of Weijand et al., U.S. Patent No. 6,305,381 (“Weijand”). Claims 9 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bertrand in view of Weijand as applied to claims 8 or 13 above, and further in view of Abraham-Fuchs, U.S. Patent No. 5,136,242 (“Abraham-Fuchs”).

With this Response, the claims have not been amended. Claims 1-36 remain pending in the application and are presented for reconsideration and allowance.

**35 U.S.C. §103 Rejections**

***Independent Claim 8***

Independent claim 8 relates to an electronic magnetic-based indicator tool. The indicator tool includes a housing, an electronic compass module, and a locator tool interface module. Specific features of the housing, the electronic compass module, and the locator tool interface module are further described below and distinguished from Bertrand in view of Weijand. For the reasons below, Applicant respectfully submits that Bertrand in view of Weijand does not teach or reasonably make obvious the features of independent claim 8.

Independent claim 8 includes the features of an electronic compass module for determining an orientation of sensed magnetic fields. The electronic compass module includes a target compass module and a background compass module. In contrast, Bertrand discloses a single, simple magnetic compass 62 as part of the indicator tool 28. *Bertrand at para. [0053]*. The compass 62 has a magnetized pointer 84 that rotates around a spindle 86 so that pointer 84 may align itself with magnetic fields it encounters. *Bertrand at para. [0056]*. In particular, the pointer 84 aligns itself with a magnet 20 carried by a valve 10, and points to an index 88 to indicate the position of the valve 10. *Bertrand at para. [0060]*; *see also Fig. 12*. Thus, Bertrand does not teach an electronic compass module including a target compass module and a

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background compass module as presently recited. The Office Action references antenna array 3 of Weijand as addressing these deficiencies (i.e., the Office Action appears to contend that a first antenna 30 is a “target compass module” and a second antenna 31 is a “background compass module”). However, antennas 30-32 of the array 3 are not “compasses” or “compass modules”. Instead, Weijand requires that the antennas 30-32 be tied to a powered coil 22 carried by the implanted drug pump. The implant coil 22 is periodically powered to transmit energy at a specific frequency; the antennas 30-32 of the array 3 are attuned to sense this specific frequency. *Weijand at col. 3, ll. 20-52; col. 4, ll. 23-27.* The antennas 30-32 of Weijand are configured to only sense the energy/frequency emitted from the coil 22. *Weijand, Abstract.* Due to the specifically attuned configurations of the antennas 30-32, then, the array 3 cannot “detect” background magnetic field data as claimed.

Further, the presently recited locator tool interface module communicates sensed magnetic field data to a processing module in the locator tool for receiving magnetic data values from the electronic compass module. The Office Action cites to the index 88 of Bertrand as the teaching the claimed locator tool interface module. Bertrand discloses the index 88 as being affixed to the upper surface 68 of the compass 62. *Bertrand at para. [0058]; see also Fig. 9.* A pointer 84 to point to a spot on the index 88, indicating a position of the magnet 20 of the valve 10. *Bertrand at para. [0060].* In this manner, the index 88 provides a visual indication to a user of the setting of the valve 10. Thus, the index 88/ locator tool interface “module” of Bertrand in no way communicates sensed magnetic field data to a processing module.

With respect to Weijand, the Office Action contends that microprocessor 54 of location processor 2 receives magnetic data values from the antennas 30-32. However, the microprocessor 54 of Weijand compares signals sampled from the antennas 30-32 and determines whether the energy received by each of the antennas is above a predetermined minimum. *Weijand at col. 4, ll. 1-4.* Thus, instead of sensed magnetic field data communicated to a processing module, Weijand discloses the electrical sampling signal sent to a microprocessor. Thus, neither Bertrand nor Weijand teach or reasonably make obvious the features of claim 8.

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Also, independent claim 8 includes the features wherein the processing module receives background magnetic field data from the background compass module and receives target magnetic field data from the target compass module when the indicator tool is located above an implanted flow control device having a magnetic indicator device coupled to a valve. The processing module determines a setting for the valve within the implanted flow control device using the background magnetic field data and target magnetic field data. The Office Action contends that the locator tool 26 of Bertrand receives background and target magnetic field data and determines a setting for the valve. Contrary to the recited features, Bertrand discloses a user visually reading/receiving data from a compass and the user determining a setting for the valve based on the single, visually received, compass reading.

The Office Action acknowledges that Bertrand does not teach an electronic processor and cites to the microprocessor 54 of Weijand as the presently recited processing module, contending that microprocessor 54 necessarily receives background magnetic field data and target magnetic field data. However, the microprocessor 54, as discussed above, is configured to receive electrical frequencies from attuned antennas. There is no magnetic data being transmitted to microprocessor 54, therefore is no magnetic data available to be received by the microprocessor 54. Pointedly, Weijand is unrelated to determining a valve setting. Therefore, the Weijand processor module does not "determine a setting for a valve" as claimed, let alone based on background and target magnetic field data. At best, modifying Bertrand in view of Weijand would incorporate the implant coil 22 and attuned antenna array 3 of Weijand with the existing magnetic compass 62. However, none of the components differentiate between background and target magnetic field data, let alone teach a processor module capable of determining a valve setting based on both background and target magnetic field data. As such, Bertrand in view of Weijand does not teach or reasonably make obvious all of the features of independent claim 8.

For at least the above reasons, it is respectfully submitted that independent claim 8 is allowable over the cited references. Claims 9-12 depend from claim 8 and are also allowable.

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***Independent Claim 13***

Independent claim 13 includes the aforementioned limitations discussed with respect to independent claim 8 and is believed allowable over the cited references for at least the above noted reasons. Therefore, the cited reference of Bertrand, either alone or in combination with Weijand, does not teach or reasonably make obvious the features of independent claims 8 or 13. Claims 14-17 depend from claim 13, and thus, for at least the above reasons, are allowable.

**CONCLUSION**

In view of the above, Applicant respectfully submits that the pending claims are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of these claims is respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

Please consider this a Petition for Extension of Time for a sufficient number of months to enter these papers, if appropriate. At any time during the pendency of this application, please charge any additional fees or credit overpayment to Deposit Account No. 500471.

Any inquiry regarding this Response should be directed to Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

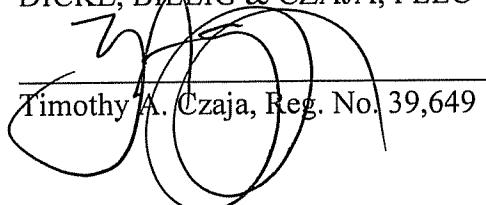
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Respectfully submitted,

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Date: 8/23/2010  
TAC:jms